

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
NORTHEAST UTILITIES)	File Number: EB-01-IH-0262
)	NAL/Acct. Number: 20023208002
Licensee of Various Land Mobile and Microwave)	FCC Registration Number: 0003-7750-53
Licenses)	

FORFEITURE ORDER

Adopted: March 11, 2002

Released: March 12, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of \$5,500 against Northeast Utilities for having willfully and repeatedly violated Section 1.17 of the Commission's rules.¹ The violations relate to Northeast Utilities' failure in three applications filed with the Commission to properly disclose that it had been convicted of felonies.

II. BACKGROUND

2. On September 27, 1999, Northeast Utilities Service Company, a subsidiary of Northeast Utilities, pleaded guilty to six counts of violating the Clean Water Act. On the same day, Northeast Nuclear Energy Company, another subsidiary of Northeast Utilities, pleaded guilty to 19 counts of violating the Atomic Energy Act by submitting false and inaccurate operator license applications to the Nuclear Regulatory Commission. Each company was ordered to pay a \$3.35 million fine and was placed on probation for three years. Each offense constituted a felony.

3. Between September 28, 1999, and November 27, 2000, Northeast Utilities, either directly or through its subsidiaries, filed more than 128 applications with the Commission for various purposes. Each of the forms specifically inquired whether the applicant, or any entity with a controlling interest in the applicant, had ever been convicted of a felony. In each instance, the applicant responded in the negative.

4. On November 28, 2000, Northeast Utilities Service Company filed an application on FCC Form 603, seeking Commission consent to the transfer of control of certain authorizations to another entity. In that application, it disclosed to the Commission for the first time that Northeast Utilities had been convicted of the felonies described above. Northeast Utilities thereafter amended its previously-filed applications which were still pending in order, albeit belatedly, to provide information about the convictions.

¹ 47 C.F.R. § 1.17.

5. The Enforcement Bureau's Investigations and Hearings Division subsequently conducted an investigation into Northeast Utilities' failure to properly disclose the company's criminal background in applications filed with the Commission. In a May 15, 2001, response to a letter of inquiry from the Investigations and Hearings Division, Northeast Utilities explained:

[Northeast Utilities] answered in the negative [regarding whether it had ever been convicted of a felony] as there was a misunderstanding as to the fact that these were indeed felony convictions. The [Northeast Utilities] personnel responsible for the licensing were aware that [Northeast Utilities] plead "guilty to violations" but did not understand that this was classified as a criminal "felony." It was never [Northeast Utilities'] intent to misrepresent this conviction and as soon as [Northeast Utilities'] staff became aware of this error, they worked with counsel and staff at [Northeast Utilities' communications law firm] to correct all outstanding applications and to identify the process to attach the necessary notification to all applications going forward.

6. Notwithstanding Northeast Utilities' disclosure on November 28, 2000, Northeast Utilities Service Company, in August 2001, filed two additional applications with the Commission. In each application, Northeast Utilities Service Company responded in the negative when asked whether it had been convicted of a felony.

7. On November 7, 2001, the Chief, Investigations and Hearings Division, issued a *Notice of Apparent Liability for Forfeiture* ("NAL") against Northeast Utilities.² The NAL concluded that Northeast Utilities had apparently violated Section 1.17 of the Commission's rules on eight separate occasions within the applicable statute of limitations.³ The NAL proposed a forfeiture against Northeast Utilities in the amount of \$20,000.

8. On December 4, 2001, Northeast Utilities filed a response to the NAL ("Response"). Northeast Utilities requests that its forfeiture liability be reduced from \$20,000 "to \$5,000 or less."⁴

III. DISCUSSION

9. Northeast Utilities does not deny that it failed to timely inform the Commission that it had been convicted of felonies, in violation of Section 1.17 of the Commission's rules. However, it maintains that a reduction of the proposed forfeiture amount is warranted because (a) the NAL overstated the number of violations for which Northeast Utilities should be held liable; (b) Northeast Utilities has acted in good faith with the Commission; it voluntarily disclosed its misconduct; it promptly took corrective action; and it has a history of compliance before the Commission; and (c) the proposed NAL amount is disproportionate to other similarly situated cases.

A. Number of Violations

10. As noted in paragraph 7, above, the NAL found Northeast Utilities apparently liable for eight violations of Section 1.17, two of which occurred in August 2001, *after* the date on which the company had voluntarily disclosed its misconduct to the Commission. In its Response, Northeast Utilities states that the failure to disclose the felony convictions in the two August 2001 applications was purely the result of clerical errors committed by United Telecom Council ("UTC"), Northeast Utilities' frequency coordinator. Northeast Utilities explains that it sent UTC draft copies of the two applications

² *Notice of Apparent Liability for Forfeiture*, DA 01-2591 (Invest. and Hear. Div., Enf. Bur., rel. Nov. 7, 2001)

³ 47 U.S.C. § 503(b)(6)(B).

⁴ Response, p. 1.

in which Northeast Utilities affirmatively represented that it had been convicted of the referenced felonies. However, according to Northeast Utilities, in the process of manually transferring the data from the forms into the Commission's Universal Licensing System, UTC inadvertently keyed into the system that Northeast Utilities had *not* been convicted of any felonies. In its Response, Northeast Utilities provides copies of the two draft applications disclosing Northeast Utilities' criminal background.

11. We agree with Northeast Utilities that the two August 2001 filings should not be considered rule violations for purposes of assessing a penalty against Northeast Utilities. Based on the information before us, Northeast Utilities did not willfully omit material information in the two applications that were ultimately filed with the Commission. Although the applications unquestionably were filed on Northeast Utilities' behalf, there is no justification in this instance for attributing the clerical error that UTC committed to Northeast Utilities. Because the forfeiture amount proposed in the NAL was based, in part, on the number of violations committed by Northeast Utilities, we will exclude from consideration the two August 2001 applications in assessing an appropriate forfeiture amount.

12. Northeast Utilities also argues in its Response that it should not be held liable for violations relating to three other applications which initially omitted reference to the felonies, but were subsequently amended to disclose the criminal convictions. According to Northeast Utilities, because the applications were amended prior to grant, the Commission was ultimately provided with "the full information necessary to properly process the applications"⁵ We agree with Northeast Utilities. In the NAL, we stated that "[b]y failing to disclose its criminal background in the various applications, Northeast Utilities essentially prevented the Commission from carrying out its statutory obligations contained in Section 309 of the Communications Act of 1934, as amended, 47 C.F.R. § 309."⁶ By timely amending the three applications, Northeast Utilities cured its otherwise flawed applications, thereby enabling the Commission to properly make the public interest determinations required by Section 309 of the Act. Consequently, we will exclude these three applications from consideration in assessing an appropriate forfeiture amount.

B. Good Faith Dealings, Voluntary Disclosure, Corrective Actions, and History of Compliance

13. Northeast Utilities next seeks a reduction of the proposed forfeiture amount because, according to the company, all of its dealings with the Commission have been in good faith; it voluntarily disclosed its misconduct to the Commission upon learning of the omissions; it promptly took corrective actions; and it has a history of compliance before the Commission.⁷ In formulating the forfeiture amount proposed in the NAL, we took into account Northeast Utilities' voluntary disclosure.⁸ We agree, however, that a reduction for Northeast Utilities' overall history of compliance is warranted. No further reduction of Northeast Utilities' forfeiture liability is warranted because the company cooperated with the Commission during its investigation of this matter. During the course of an investigation into a licensee's compliance with the Commission's rules, we expect nothing less than full and complete cooperation. Finally, Northeast Utilities' remedial efforts, while commendable, are not a mitigating factor and, thus, do not warrant a reduction of the forfeiture amount.⁹

⁵ Response, p. 7.

⁶ NAL, p. 7.

⁷ Response, pp. 6 - 9.

⁸ NAL, p. 3.

⁹ See *Palouse Country, Inc.*, DA 02-03 (Enf. Bur., rel. January 4, 2002), citing, *American InfoAge, LLC*, 16 FCC Rcd 16185 (Enf. Bur. 2001).

IV. CONCLUSION

14. Based on the foregoing, we agree with Northeast Utilities that a reduction in the forfeiture amount from that proposed in the NAL is appropriate. The NAL proposed a forfeiture in the amount of \$20,000. This amount was based, in part, on our initial view that Northeast Utilities apparently had engaged in eight actionable violations of Section 1.17 of the Commission's rules. As noted above, we now believe that Northeast Utilities' liability should extend to only three such violations. We also believe a reduction is appropriate for its history of overall compliance. For the reasons discussed above, we believe no factors exist beyond those already considered in the NAL for further reducing the amount of the forfeiture. Based on the totality of the information before us, we conclude that a forfeiture in the total amount of \$5,500 is appropriate.¹⁰

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to section 47 U.S.C. § 503(b) and Section 47 C.F.R. §§ 0.111, 0.311, and 1.80, that Northeast Utilities IS LIABLE FOR A MONETARY FORFEITURE in the amount of five thousand, five hundred dollars (\$5,500) for willfully and repeatedly violating 47 C.F.R. § 1.17.

16. IT IS FURTHER ORDERED, that payment of this forfeiture shall be made in the manner provided for in 47 C.F.R. § 1.80 within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504(a). Payment may be made to the Commission's Revenue and Receivables Operations Group by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment SHALL INCLUDE the FCC Registration Number and the NAL/Acct. Number referenced above.

17. IT IS FURTHER ORDERED that a copy of this Forfeiture Order SHALL BE SENT by Certified Mail - Return Receipt Requested to: Daniel P. Venora, Associate General Counsel, Northeast Utilities System, 107 Seldon Street, Berlin, CT 06037.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ In light of the revised forfeiture amount, Northeast Utilities' argument relating to the relative amount of the forfeiture vis-à-vis the \$8,000 forfeiture in *Curators of the University of Missouri*, 16 FCC Rcd 1174, 1181 (2001), is rendered moot.